IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 764/2006
CHAND NARAIN PATWARI Vs. STATE OF RAJASTHAN & ANR.

DATE: 15.03.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Prahlad Sharma for the accused-petitioner.
Mr. B.S. Chhaba, Public Prosecutor for the State.
Mr. I.D. Sharma for the complainant-non-petitioner.

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The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the accused-petitioner against the judgment dated 07.07.2006 passed by the Special Judge (Sati Niwaran) Rajasthan & Additional Sessions Judge, Jaipur City, Jaipur in Criminal Appeal No. 281/2006, whereby the appeal filed by the accused-petitioner has been dismissed and the judgment dated 31.03.2005 passed by the Additional Civil Judge (Jr. Division) & Judicial Magistrate No.16, Jaipur City, Jaipur in Criminal Case No. 336/2002 has been upheld, by which the accused-petitioner has been convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months along with fine of Rs. 3,50,000/-.

In brief the facts of the case are that the complainant has filed a complaint under Section 138 of

the N.I. Act stating therein that accused-petitioner had borrowed Rs. 3,00,000 from him for his personal and business purposes but he failed to pay the borrowed money and while refusing the payment the accused-petitioner told the complainant that due to some unavoidable circumstances he could not make the payment of borrowed money. When the complainant requested the accused-petitioner then he issued a cheque bearing No. 020113 dated 31.03.2002 amounting to Rs. 3,00,000 of S.B.B.J., Surajpole Branch, Jaipur against loan amount and assured the complainant that when he will deposit the aforesaid cheque the same will be encashed, but upon presentation of the said cheque in bank, the same was dishonored due to lack of fund, therefore, after issuing notice to the accused, the complainant filed a complaint before the Court below under Section 138 of the N.I. Act.

The trial Court after conclusion of the trial, vide judgment dated 31.03.2005 convicted the accused-petitioner under Section 138 of the N.I. Act and sentenced to undergo simple imprisonment for six months and a fine of Rs. 3,50,000/-. Against the said judgment dated 31.03.2005, the accused-petitioner filed an appeal before the Appellate Court and the same was dismissed vide judgment dated 07.07.2006 by the Appellate Court.

Learned counsel for the complainant does not dispute that he has received the fine amount of Rs. 3,50,000/- from the petitioner. It is also stated that he does not want to pursue the case and undertakes to withdraw the civil suit also, which is pending between the parties. It is also agreed that Rs. 85,000/- deposited by the accused with the trial Court may be given to the complainant and as per the settlement they do not want to pursue the case.

In view of the facts and circumstances of the case as the settlement is arrived at between the parties outside the Court and the fine amount has already been paid by the accused-petitioner and the amount which has been paid is also not denied and the cases which are pending between the parties, the parties are agreed to withdraw the same, therefore, in the terms indicated herein above, the impugned judgment dated 07.07.2006 passed by the Appellate Court and the judgment of the trial Court dated 31.03.2005 are herewith quashed and set-aside.

The revision petition stands allowed accordingly. Record be sent back forthwith.

(K.S. RATHORE),J.

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